IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7967 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DEPUTY EXECUTIVE ENGINEER

Versus

KANJIBHAI BHALABHAI KOLI

Appearance:

1. Special Civil Application No. 7967 of 2000

MR PJ KANABAR for Petitioner No. 1

MR TR MISHRA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 24/09/2004

ORAL JUDGEMENT

By the present petition, the petitioner has challenged the award dated 10.3.2000 passed by the Labour Court, Amreli in Reference Case No. 3 of 1999.

2. By the above mentioned impugned award, the Labour

Court was pleased to allow the Reference of the respondent workman. The action of the petitioner in terminating the services of the respondent in October, 1987 was set aside and consequently, the petitioner was directed to reinstate the respondent in service with full backwages and continuity of service.

3. It is the case of the respondent workman that he was working as a driver with the petitioner and had actually worked from October, 1985 to October, 1987. It was alleged that his services came to be terminated in October, 1987 without following any formalities, without issuing notice or offering notice pay or paying retrenchment compensation. The respondent had further alleged that the petitioner had not maintained seniority list and his termination was therefore in violation of Section 25F of the Industrial Disputes Act and is also opposed to the provisions of Section 25G of the Industrial Disputes Act.

4. The Labour Court, after permitting both sides to lead evidence on record and considering the material on record, came to the conclusion that the respondent had completed more than 240 days during the relevant period i.e. 12 calendar months prior to the date of his termination, and his services were terminated without following the procedure laid down under the law, especially under Section 25F of the Industrial Disputes Act. The Labour Court also found that though there was a criminal case filed against the respondent, eventually he was acquitted of the charges levelled against him and that therefore, the petitioner could not have terminated the services of the respondent without following any legal formalities only on the ground of involvement in a criminal case.

In the result, the Labour Court was of the opinion that the termination of the respondent was against the provisions of Section 25F of the Industrial Disputes Act and otherwise also the termination was illegal and unlawful. The Labour Court was therefore, pleased to set aside the order of termination and directed reinstatement of the respondent with full backwages.

5. Having heard the learned Counsel appearing for the parties and having considering the material on record, I find that the Labour Court has not committed any illegality in arriving to the conclusion that the termination of the respondent was illegal. The Labour Court having considered the material on record and having

come to a definite finding of fact that the respondent workman had completed 240 days of work during the relevant period of 12 calendar months preceding the date of termination, the conclusion that the termination was illegal having been passed without following the procedure laid down under Section 25F of the Industrial Disputes Act, cannot be faulted with. The conclusion of the Labour Court is born out from the material on record and no perversity has been pointed out by the learned Counsel for the petitioner. The respondent having been acquitted in the criminal case and the petitioner not having conducted any Departmental enquiry independent of the criminal case, the termination cannot be sustained only on the basis of the allegations in the criminal complaint. On this ground also, the conclusion of the Labour Court cannot be found fault with. I therefore, find that the Labour Court was justified in striking down the order of termination.

6. The question of payment of backwages however, stands on a different footing. The respondent had worked only for about 2 years before his services were terminated and to saddle the petitioner with idle wages for a long period from 1987 till date by way of full backwages would not be justified. Considering the over all facts and circumstances, I am of the opinion that the direction for payment of 100% backwages are required to be modified. Accordingly, though the direction with respect to reinstatement is upheld, the respondent will be entitled to only 25% of the backwages for the intervening period. The award of the Labour Court shall stand modified to the above extent.

7. With the above modifications, the award of the Labour Court is confirmed. The petition is disposed of accordingly. Rule is discharged with no order as to costs.

(Akil Kureshi, J.)

*/Mohandas